

REMARKS

The Official Action dated May 3, 2007 has been carefully considered. Accordingly, it is believed that the present Request places this application in condition for allowance. Reconsideration and an early allowance are requested.

Claims 31-46, 48-60, 62-73, 75 and 77-80 are pending in this application, with claims 38, 48, 49, 53-55, 65, 66 and 76 having been withdrawn from consideration as directed to a nonelected species. Once generic claim 31 has been allowed, rejoinder and allowance of these withdrawn claims is respectfully requested.

In the Official Action, claims 31-37, 39-42, 44-46, 50, 56-58, 60-64, 67-75 and 77-80 were rejected under 35 U.S.C. §102(b) as being anticipated by the Kelman U.S. Patent No. 5,190,552. In response to Applicant's previous arguments, the Examiner stated that the claim structure is found in Kelman's device and would operate as claimed if an intraocular lens such as that disclosed by the newly cited Walman Reissue Patent Re 34,424 were placed in the seat and pushed forward. The Examiner asserted that the ramped guiding surfaces 34 would cause the haptics to move or orient to a less curved state because the ramps would engage Walman's element 34 and slide up element 36 causing it to straighten to a degree.

Initially, Applicants note that the Examiner has not rejected claims 43, 51, 52 and 59. Accordingly, the Examiner is requested to indicate the allowability of these claims or issue a new Official Action acting on these claims.

Applicants respectfully traverse the rejection with respect to claims 31-37, 39-42, 44-46, 50, 56-58, 60-64, 67-75 and 77-80 and request reconsideration of the patentability of these claims.

According to independent claims 31 and 75, the present invention is directed to a device for stretching the haptics of a deformable intraocular lens, the lens in un-deformed state comprising a) a roughly disc shaped optic part, defining an optic plane and a concentric

optic axis normal to the plane, configured to act as a lens when inserted into an eye, and b) at least two elongated haptic legs, each leg having an inner end attached to the optic part, an outer end being free and intermediate points in between the inner end and the free end, each leg being curved in unstressed state, the curvature defining a curve plane for each leg, and being flexible to at least a less curved configuration under stress. The device comprises i) at least two haptic guiding surfaces respectively arranged for the at least two haptic legs, the guiding surfaces having less curvature than the legs in un-stressed state, and ii) a seat for the lens arranged with respect to the guiding surfaces so as to allow, when a lens is positioned in the seat, contact between a first point on each leg and its corresponding guiding surface. According to claim 31, the device further comprises iii) a lens guiding arrangement allowing the lens to be moved along a path bringing at least a second point on each leg into contact with, or closer to, its corresponding guiding surface, to orient each leg to a less curved state. According to claim 75, the device further comprises iii) a transfer opening allowing passage of the lens with the haptics, having said less curvature, to a receptacle.

Kelman discloses an injector 1 which includes a hollow open-ended, slotted longitudinal tube 3 at its injection end. Tube 3 has a loading end 8 and an insertion end 9 interconnected by a longitudinal bore 10 and a continuous longitudinal central top slot 11 extending from end 8 to end 9 and communicating bore 10 with the tube exterior. Slot 11 permits haptics 42 to protrude freely to the tube exterior from lens 40 when the lens is folded in bore 10 (column 5, lines 47-58 and Figs. 1, 4, 5, 7 and 8). Fig. 5 is particularly illustrative to show that the haptics 42 extend freely through slot 11.

The loading end 8 forms an inclined end 25 defining a gradually constricting guide means for controlled gradual folding of the lens 40 into bore 10 and controlled gradual guided locating of haptics 42 in the top slot 11. An inclined end 25 tapers upwardly and inwardly along an incline from a distal longitudinal point 26 peripherally remote from slot 11

to a proximate longitudinal point 27 peripherally at slot 11 (column 7, lines 20-27). Kelman further discloses that opposed gradually constricting guide surfaces 32 are formed at the loading end 8 to guide opposing peripheral portions of the lens 40 gradually toward each other and conformingly against and into end 8 to aid in folding the lens as it moves thereinto. A breach recess 33 is defined in support 2 at surfaces 32 to locate unfolded lens 40 on platform 14 and opposed grooves 34 are formed at recess 33 to receive and locate the opposed haptics 42 in a direction crosswise of the central top slot 11 to permit surfaces 32 to guide the haptics 42 in a predetermined orientation gradually upwardly toward each other and in turn longitudinally inwardly into slot 11 as the lens 40 moves into the loading end 8 (column 7, lines 37-49, Fig. 7).

Accordingly, Kelman discloses the grooves 34 to receive the opposed haptics 42 when the lens is placed in recess 33 in order "to permit surfaces 32 to guide the haptics 42 *in a predetermined orientation* gradually upwardly toward each other and in turn longitudinally inwardly into slot 11" (emphasis added). In fact, the grooves 34 merely orient the haptics so that as the lens is folded, the haptics arrive at the slot 11. As shown in Figs. 1, 4 and 5, the haptics are continually in an unrestrained, normally curved orientation. Kelman does not provide any disclosure of a device or structure which is operable to orient a haptic to a less curved state, or even that contacts a haptic in a curved portion of the haptic structure. Particularly, Kelman provides no teaching of "a lens guiding arrangement allowing the lens to be moved along a path bringing at least a second point on each leg into contact with, or closer to, its corresponding guiding surface, to orient each leg to a less curved state" as required by claim 31. To the contrary, the grooves 34 and guiding surfaces 32 of Kelman merely locate and guide the haptics to follow the peripheral portions of lens 40 as they are guided toward each other.

Further, Kelman does not provide any disclosure of a device including "a transfer opening allowing passage of the lens with the haptics, having said less curvature, to a receptacle" as recited in claim 75. Kelman clearly provides no teaching in this regard as the haptics extend in their curved configuration from the tube slot 11 for insertion as shown in Figs. 5 and 8.

Moreover, Applicants respectfully submit that the Examiner is in error in asserting that the Walman lens can be used in Kelman's device. That is, the Kelman device is an injector for a deformable intraocular lens having opposed seating haptics (column 3, lines 19-23). On the other hand, the lens of Walman containing elements 34 and 36 referred to by the Examiner does not contain opposed seating haptics. Rather, the haptics extend from the same side of the lens optic. Accordingly, contrary to the Examiner's assertion, the Walman lens could not be properly received in the Kelman device. Moreover, there simply is no support in Kelman's specification or drawings that would ensure that grooves 34 would necessarily cause the haptics to move or orient to a less curved state; to the contrary, the Kelman disclosure in Figs. 1, 4, 5 and 8 show the haptics in an unrestrained curved configuration. In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art, *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat App & Int'f 1990). Inherency may not be established by "probabilities or possibilities," *Scaltech, Inc. v. Retec/Tetra, LLC.*, 51 USPQ2d 1055, 1059 (Fed. Cir. 1999). The Examiner has not met this burden.

Anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference, *In re Robertson*, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999). In view of the deficiencies in the teachings of Kelman with respect to the devices of claims 31 and 75, including, *inter alia*,

Kelman's failure to teach a device for stretching the haptics of a deformable intraocular lens and particularly a seat and lens guiding arrangement as recited in claim 31 or a seat and transfer opening as recited in claim 75, Kelman does not describe, either expressly or inherently, each and every limitation as set forth in the present claims. Thus, Kelman does not anticipate the present claims under 35 U.S.C. §102. Reconsideration is respectfully requested.

It is believed that the above represents a complete response to the Official Action, and places the present application in condition for allowance. Reconsideration and an early allowance are requested.

Please charge any fees required in connection with the present communication, or credit any overpayment, to Deposit Account No. 04-1133.

Respectfully submitted,

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